Supreme Court U.S.
FILED

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In The

SUPREME COURT OF THE UNITED STATES

GREGORY K. CHASE,

Petitioner,

v.

JORDAN SCHOOL DISTRICT.

On Petition For Writ Of Certiorari
To The Utah Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Whether *Siegert* overturned *Paul v. Davis*?

2) Whether one's resignation in good standing from a past employer precludes an employee from § 1983 recovery for damages when the former employer defames the employee to the prospective future employer resulting in the direct loss of that future employment opportunity?

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INTRODUCTION

This is an appeal of a former police officer employee of Jordan School District, Gregory K. Chase, who after voluntarily resigning from the district, sought employment with another police department, Midvale City Police. While his application was pending, an assistant chief of Midvale P.D., Dan Pearson, spoke with the chief of Jordan School District, Clyde Shaw, outside of Jordan School District policy concerning Mr. Chase. In that conversation, the chief expressed knowingly false and defamatory statements to Asst. Chief Pearson which ultimately proximately resulted in Mr. Chase's denial of employment. At the time of the conversation, Chief Shaw, while in uniform and as Chase's former supervisor, Chief Shaw acted under *color* of authority, whether "any statute, ordinance, regulation, custom, or usage of any state." See 42 U.S.C. § 1983.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

Gregory K. Chase (hereinafter "Chase") respectfully petitions for a writ of certiorari to review the judgment of the Utah Court of Appeals in this case, after the Utah Supreme Court declined to issue a writ of certiorari.

OPINIONS BELOW

The decision of the Utah Supreme Court denying the

Petitioner a writ of certiorari to the Utah Court of Appeals and the Utah Court of Appeals' Memorandum Decision are contained in the Appendix at App. 1-5. Concerning the decision of Chase's related appeal, *Chase v. Midvale City*, 20041127-CA is contained in the Appendix at App. 28-31.

JURISDICTION

The final decision of the Utah Supreme Court denying the Petitioner a writ of certiorari to the Utah Court of Appeals was entered on September 15, 2005. (App. 1). The jurisdiction of this Court to review this matter is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Constitutional provisions are involved in this case:

I. The Due Process clause of the Fifth Amendment, which provides, inter alia:

> No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

II. The Due Process clause of the Fourteenth Amendment, which provides, in Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The following State statutory provisions are involved in this case:

> Utah Code Ann. § 10-3-1001 (1953, as amended).
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> Utah Code Ann. § 10-3-1002 (1953, as amended).

STATEMENT OF THE CASE

I. Nature of the Case:

This is a civil action wherein, Mr. Chase appeals his 42 U.S.C. § 1983 action for defamation and deprivation of liberty interest claims. (App. 9) This case arises out of the wrongful interference of an employment application in that both Jordan School District and Mr. Chase's prospective employer, as public employers have established employment policies and procedures. (App. 9) In respect to Jordan School District, Chief Clyde Shaw made knowingly false and reckless statements about him under color of his apparent authority as the Chief of Jordan School District and as the former supervisor

of Mr. Chase. (App. 9) The statements were defaming and resulted in the deprivation of a liberty interest (i.e., an employment opportunity).

II. Course of the Proceedings:

Mr. Chase appeals Judge Medley's decision to grant Jordan School District Summary Judgment and for the denial to amend the plaintiff complaint to sue Clyde Shaw in his personal capacity–since the granting of summary judgment was as to Jordan School District (the only party previously sued) in its official capacity.

On June 6, 2003, Mr. Chase sued Jordan School District and John Does I-V.[1] (App. 10) Prior to filing, Midvale City refused to share with Mr. Chase the name of his tortfeasor from Jordan School District, and Jordan School District ignored Mr. Chase's notice of claim. (App. 10). Nevertheless, Jordan School District responded on July 1, 2003 by filing an Answer. In that Answer, the defendant claimed in part that it was "without knowledge or information sufficient to form a belief

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1 John Does were sue because at the time of filing the details of and the source of the defamation against Mr. Chase was unknown to him. It was during the course of litigation that the individual, Clyde Shaw was made known to him. Since Mr. Chase alleged conduct of employees in their official capacity, no amendment was sought to include a cause of action against Mr. Shaw in his personal capacity until after the discovery and the dismissal by the court. (R. at 2). *See*, *Adamson v. Provo*, 819 F. Supp. 934, 947 (D. Utah 1993) ("Utah Code Ann. § 78-12-28(1) provides two years for actions against officials acting in their "official capacity.")

as to the truth of" all of Plaintiff's factual allegations 9-22.[2] (App. 10) An attorney planning meeting was conducted on August 18, 2003 and the report was filed on August 29, 2003. (App. 10) In that schedule, inter alia, the parties agreed to exchange initial disclosures by September 12, 2003; to the cut-off the date to amend pleadings by November 3, 2003; to complete all discovery by April 16, 2004; and to a dispositive motion cut-off of May 21, 2004.

Then the parties engaged each other in discovery. (App. 11) Five months into discovery and four months early, defendant filed its Motion For Summary Judgment. (App. 11) The motion was filed without amending its Answer. (App. 11) In that motion, defendant claimed, inter alia, that because Chase voluntarily resigned from employment with the Jordan School District, and applied for employment elsewhere, plaintiff could not assert a liberty interest claim for any subsequent defamation. (App. 11)

The defendant's motion was supported by memorandum and the affidavit of George A. Welch, the executive director for the school district. (App. 11) During the pendency of the motion, the parties continued to conduct discovery, including the deposition of Dan Pearson on April 15, 2004 and April 28, 2004. (App. 11) Meanwhile, before the deposition had taken place, Mr. Chase responded to motion for summary judgment

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2 In violation to Utah R.Civ.P. 8 and the principles of the notice of claim requirements of the Governmental Immunity Act, formerly 63-30-1 et seq. Jordan School District's averments were never amended, even when it filed it's Motion For Summary Judgment–at that time it obviously was aware that Clyde Shaw made the defaming statements. (App. 10).

on February 23, 2004. Jordan School District filed a reply on February 26, 2004. On Jordan School District's request to submit for decision, the Court scheduled oral arguments and a hearing was conducted on May 10, 2004 before the Honorable Tyrone E. Medley. At the conclusion of the hearing, the court took the motion under advisement. The following day, May 11, 2004, Judge Medley issued a minute entry granting summary judgment based upon "all of the undisputed material facts, and all of the legal authorities and analyses set forth in defendant's Memoranda in support and reply."

On May 20, 2004, believing the matter dismissed only Jordan School District and before a final order was submitted, plaintiff moved to amend his complaint substituting John Does I - V with Clyde Shaw, based upon the testimony of Dan Pearson on April 15, 2004 and April 28, 2004. (App. 11) During the deposition, it was revealed that counsel, Morris O. Haggerty had known the details of the Dan Pearson-Clyde Shaw conversation, and of the defamation done by Clyde Shaw since April 2003 during a private interview. (App. 11) This revelation obviously demonstrated that the averments contained in the Answer filed on July 1, 2003 was not done in good faith and justified the filing of an Amended Complaint. (App. 12) The plaintiff's Amended Complaint was filed on May, 20, 2004, contemporaneously with Chase's motion to amend and his supporting memorandum and affidavit relying, among other things *Boyce v. Marble*, 982 P.2d 565, 568 (Utah 1999) ("On occasion, justice and fairness will require that a court allow a party to designate witnesses, conduct discovery, or otherwise perform tasks covered by a scheduling order after the court-imposed deadline for doing so has expired")[3] (App. 12) On

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3 even though in this matter no scheduling order had been imposed by the court because the parties only agreed to

June 1, 2004, Judge Medley signed the order dismissing Jordan School District. (App. 12) On that same date, the school district opposed Chase's motion to amend, despite being dismissed from the action. (App. 12) Because Plaintiff believed that the school district lacked standing to oppose the motion to amend, Mr. Chase filed a motion to strike the memorandum on June 15, 2004. (App. 12) On June 16, 2004, the school district responded to the motion to strike. (App. 12) On June 18, 2004, Judge Medley issued a minute entry again in favor of the school district incorporating "all of the legal analyses and authorities set forth in defendant's Memorandum in opposition." (App. 12)

On July 1, 2004, a final order was entered against Mr. Chase. (App. 12) This appeal followed with the filing of Mr. Chase's Notice of Appeal on July 2, 2004. (App. 12)

III. Disposition in Trial Court:

As stated above, on June 1, 2004, an order was entered against Mr. Chase granting summary judgment for Jordan School District. (App. 12) Then on July 1, 2004, the order was entered against following rejection of plaintiff's motion to amend complaint. (App. 12).

IV. Statement of Facts:

In approximately April, 2002, Mr. Chase voluntarily resigned from his employment with Jordan School District. He was employed there from 1994 to 2002 as a police officer. When he left Jordan School District it was not under a threat of

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a plan. See attorney's planning meeting reports. (App. 12).